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Letter dated 30 May 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 April 2003 (S/2003/427).

The Counter-Terrorism Committee has received the attached third report from the Republic of Korea submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

* Reissued for technical reasons.

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Annex

Letter dated 29 May 2003 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to the letter of the Chairman of the Counter-Terrorism Committee dated 24 February 2003 (S/AC.40/2002/MS/OC.209) containing the Committee's questions and comments on the earlier supplementary report of the Republic of Korea in implementing Security Council resolution 1373 (2001), I have the honour to enclose herewith a further supplementary report from the Government of the Republic of Korea (see enclosure)* in response to the Committee's request.

(*Signed*) **Sun** Joun-yung
Permanent Representative

* Attachments are on file with the Secretariat and are available for consultation.

Enclosure

Supplementary report by the Republic of Korea to the Counter-Terrorism Committee pursuant to the Security Council resolution 1373 (2001)

I. Implementation measures

1.2 The effective implementation of paragraph 1 requires each Member State to take a number of steps to prevent and suppress the financing of terrorism, including, in particular, the criminalization of the provision or collection, by its nationals/entities and others in its territory, of funds intended for purposes of terrorism, regardless of whether:

- any associated terrorist act is attempted or committed; or
- any associated act of terrorism occurs, or is planned to occur, within its territory or that of another State; or
- funds or assets are or are not actually transferred from one State to another.

The report states that, at present, the crime of financing of terrorism is dealt with in a number of criminal laws as an act of complicity in crime. They do not seem to deal adequately with the requirements of that paragraph. Will the anti-Terrorism Bill make specific provision in this regard?

The draft Anti-Terrorism Bill defines as terrorist funds all kinds of assets held by the terrorist organizations and any proceeds obtained through terror-related activities, and has specific provision to criminalize the financing, mediation, preservation, use and laundering of these terrorist funds.

1.3 At the time of submission of the supplementary report, that Bill was stated to be under consideration by the Intelligence Committee. The CTC would welcome:

- a further progress report on the enactment and implementation of that Bill; and
- a detailed outline of its provisions.

In particular, the CTC would welcome:

- an indication of the full range of offences being created and the criminal and civil penalties attaching to them; and
- an assurance that provision is made for alleged perpetrators to be detained, and assets frozen, pending criminal investigations and proceedings.

The draft Anti-Terrorism Bill has undergone review and discussion at the Intelligence Committee of the National Assembly in March 2002. Since then, the Bill has remained in the Committee without further progress, due to the interference of the domestic elections and the situation surrounding the Korean Peninsula. The new Government was installed after inauguration in February, and as a result the National Assembly will soon resume review of the draft Anti-Terrorism Bill.

Aside from the draft Anti-Terrorism Bill, by the end of the year, Korea's legislature will enact the Act on the Punishment of Terrorist Bombing and the Financing of Terrorism which will implement the agreed upon tenets of the International Convention for the Suppression of Terrorist Bombing and the

International Convention for the Suppression of the Financing of Terrorism. The Government plans to submit the draft Act to the National Assembly by August 2003.

The draft Act is intended to strengthen the domestic legal regime to implement the provisions of the two International Conventions mentioned above. In particular, it includes major elements contained in the draft Anti-Terrorism Bill, such as criminalizing the financing of terrorism. Main points of the draft Act are as follows:

- to punish crimes using explosives, nuclear, chemical, and/or biological materials for the purpose of killing people and/or inflicting serious material losses;
- to punish those who collect or provide funds for the purpose of terrorist activities, and provide for the seizure by the authorities of such funds.

The following are the main elements of the draft Anti-Terrorism Bill. The draft will be reviewed soon, subject to further amendment in the language; the final text will be submitted to the CTC as soon as the draft is approved.

- Chapter I: General Provisions dealing with the objectives, definitions, and the principle of the preferential application of this Act to other laws, etc.
- Chapter II: Counter-Terrorism Structure:
  - in order to review and decide important matters relating to counter-terrorism policies, to establish under the control of the President a permanent "National Counter-Terrorism Council" composed of relevant authorities at the Ministerial level, with the Prime Minister as its Head.
  - to establish a Counter-Terrorism Center composed of mid-career level officers of the relevant authorities, and a Counter-Terrorism Committee at the cities, provincial capitals, main airports and sea ports, for the counter-terrorism activities, taking into account the regional peculiarities.
- Chapter III: Prevention of Terrorism and Counter-Terrorism:
  - The Head of relevant authorities is to formulate the ways and means to prevent terrorism against important national facilities, public facilities and equipment, and establish the safety management scheme on the means to conduct terrorism.
  - to share terror-related information with foreign governments and international organizations.
- Chapter IV: Punishment:
  - to criminalize acts of terrorism, of supporting terrorism, and of forming terrorist organizations, and to define as terrorist funds all kinds of assets held by the terrorist organizations and proceeds obtained through terror-related activities.
  - to criminalize the financing, mediation, preservation, use of terrorism funds, and the laundering of terrorist funds.
- Chapter V: Supplements.

1.4 For effective suppression of financing of terrorism there must also be an obligation on all financial institutions, and on all others (including lawyers)

involved in financial transactions, to report all suspicious transactions, as contemplated by Article 18 of the Convention for the Suppression of the Financing of Terrorism. From the supplementary report, it appears that, under Article 4 of the Financial Transaction Report Act 2001, only financial institutions are required to report suspicious transactions. What are the intentions of the Republic of Korea in regard to extending this requirement to other financial intermediaries?

The Financial Transaction Reports Act 2001 imposes in Article 4 the obligation of reporting suspicious financial transactions on financial institutions only. We intend to consider legislation to expand the obligation of reporting suspicious financial transactions to other financial intermediaries in the future, consistent with the recommendations of the Financial Action Task Force for Money-laundering.

1.5 What are the criteria by which transactions are characterized as suspicious for the purposes of the Financial Transaction Report Act 2001?

Article 4 of the Financial Transaction Reports Act 2001 stipulates the criteria by which transactions are characterized as suspicious:

- if there is a reasonable basis for suspecting that property handled in a financial transaction is illegal;
- if there is a reasonable basis for suspecting that the party to a financial transaction is engaging in money-laundering activity;
- if there is a reasonable basis for suspecting that the party to a financial transaction has split a large transaction into a group of smaller ones.

In order to help financial institutions identify suspicious financial transactions, the Korea Financial Intelligence Unit (KoFIU), an independent body in charge of monitoring money-laundering activities, has circulated to all financial institutions several guidelines containing sample cases of suspicious transactions and reporting procedures. The guidelines that have been circulated are as follows: "Sample Cases of Suspicious Transactions" (November 2001); "Sample Cases of Suspicious Transactions involving Money Exchangers and Casinos" (April 2002); "Sample Cases of Suspicious Transactions involving Credit Card Companies" (June 2002).

1.6 The CTC understands from the supplementary report (subparagraph 1 (a), item B, first bullet) that the Proceeds of Crime Act is to be amended to include within the notion of "criminal proceeds" any funds and other assets connected with "an act or attempted act to supply funds in order to maintain a criminal group", even though those funds and assets are not, in fact, derived from criminal activity. Please confirm that that is the intention. Please also describe what constitutes a "criminal group" for the purposes of that Act, in particular, whether it includes groups operating outside the Republic of Korea and not affecting Korean interests.

First of all, we have not referred to any intention to amend the Proceeds of Crime Act 2001 in our report of 19 June 2002. Article 2, paragraph 2 of the Proceeds of Crime Act includes in the definition of criminal proceeds those funds or assets in connection with an act violating Article 5, paragraph 2 and Article 6 of the Act on the Punishment of Violent Actions, that is, either an act or an attempted act to supply funds in order to organize and maintain a criminal group. Therefore, there is no need for amendment of the Proceeds of Crime Act for the purposes mentioned above.

Additionally, in order to effectively suppress terrorist activities and the financing of terrorism, the Government of the Republic of Korea is in the process of legislating the Act on the Punishment of Terrorist Bombing and the Financing of Terrorism, paving the way for speedy ratification of the two related International Conventions.

Article 4, paragraph 1 of the Act on the Punishment of Violent Actions defines a criminal group as one which commits any of the following crimes: inflicting bodily harm and violence, false arrest and illegal confinement, coercion, intrusion upon habitation and refusal to leave, obstruction by violence against those attempting to exercise their rights, extortion, and destruction.

Any foreign group committing the aforementioned crimes is regarded as a criminal group, even if operating outside the Republic of Korea and not affecting Korean interests. However, the Criminal Act of the Republic of Korea does not grant to the Korean authorities jurisdiction over crimes against foreign countries or foreign nationals committed by foreigners outside its territory.

1.7 Member States are required to have legal or other provisions that enable authorities to freeze without delay funds and other financial assets or economic resources of persons and/or entities, both resident and non-resident, that are linked to terrorism. It should be noted that, for this purpose, the funds, etc., need not be proceeds of crime but could be of lawful origin and yet be used, or intended for use, for terrorism, either within or outside the territory of the Republic of Korea. It is not clear from the two reports what powers the Government of the Republic of Korea has to freeze such resources in all relevant circumstances. What effect will the proposed amendments of the Proceeds of Crime Act mentioned above have? It would be helpful if the Republic of Korea could provide a progress report on the enactment of those amendments and a detailed outline of the provisions of that Act (as proposed to be amended) that are relevant to the implementation of paragraph 1 of the Resolution. The CTC would also appreciate receiving a detailed description of the existing procedures for the freezing of assets. In particular, is it a judicial, enforcement or administrative operation?

As mentioned in the previous answer, we have no need or intention to amend the Proceeds of Crime Act 2001.

In preparation for undertaking steps to freeze assets swiftly in response to the request from the United Nations Security Council through its resolutions, the Ministry of Finance and Economy issued a new decree on 11 October 2001, entitled Approval Guidance on Payment and Receipt of Taliban and other Terrorist-related Funds under the legal authority of the Foreign Currency Control Act. In accordance with the decree, the Ministry sends a list of suspected terrorists or terrorist groups to all financial institutions, which are then obligated to register the names in their electronic database. The financial institutions are further obligated to investigate their accounts for any financial transactions involving those named on the list, and to provide relevant information to the Ministry. The act of freezing assets is both an administrative and a judicial operation.

On 12 December 2002, the Ministry amended the decree to incorporate a bilateral request from the United States Government for a financial ban on those designated under United States Executive Order 13224 of 23 September 2001.

1.8 What is the legal basis in the Republic of Korea for the freezing of the assets of persons and entities named in the list prepared for the purposes of Security Council resolution 1267 (1999)? What provision is currently in place, or proposed, to enable the freezing of the assets of persons and entities that are not included in any such list but are reasonably suspected of involvement in terrorist activities or in the support of terrorist activities, when those assets are not the proceeds of crime?

In order to implement the financial ban against individuals and entities associated with the Taliban and al-Qa'idah that was imposed pursuant to Security Council resolution 1267 (1999), as mentioned above, the Ministry of Finance and Economy issued a new decree, on 11 October 2001, entitled Approval Guidance on Payment and Receipt of Taliban and other Terrorist-related Funds under the legal authority of the Foreign Currency Control Act. In accordance with the decree, banks and other financial institutions are required to freeze financial assets belonging to the individuals and entities on the list.

As regards the individuals and groups suspected of being involved in the terrorist activities but not included in the list, it is possible to freeze assets belonging to them pending the completion of the relevant investigation, in accordance with the provisions of the Proceeds of Crime Act 2001.

In the event foreign governments request that the Republic of Korea freeze assets of those individuals and groups not included in any such list but designated as terrorists by foreign governments, we may consider freezing those assets. The Ministry amended the above decree to incorporate a bilateral request from the United States Government for a financial ban on those designated under United States Executive Order 13224 of 23 September 2001.

1.9 The CTC would be grateful for a more detailed description of the controls in place to prevent the misuse of charitable, religious and cultural organizations for the financing of terrorism.

The Acts relating to the suppression of the financing of terrorism such as the Financial Transaction Reports Act, the Proceeds of Crime Act, and the Foreign Currency Control Act are applicable to all financial actors, including both individuals and charitable, religious and cultural organizations.

The Civil Act, and the Act on the Establishment and Operation of Public Organizations stipulate that those who wish to establish non-profit organizations such as charitable, religious and cultural organizations must register with the relevant authorities. The supervisory authorities will monitor their activities so that these organizations are not implicated in terrorist or criminal activities.

In particular, supervisory authorities seek to ensure transparency in the execution of budgets by these organizations, through annual auditing. Pursuant to the Criminal Act, these organizations are subject to punishment under the crimes of breach of trust or misappropriation and embezzlement in the event of the abuse or misuse of budgets.

1.10 The CTC is aware that the Republic of Korea may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of the Republic of Korea's response to these matters as well as details of any efforts to

implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.

Attached herewith is a copy of the self-assessment questionnaire that was submitted by the Government of the Republic of Korea to the Financial Action Task Force for Money-laundering on 1 May 2002. The paper elaborates on measures undertaken by the Government regarding the FATF Special Recommendations on Terrorist Financing.

1.11 The CTC would be grateful to have an outline of the legal provisions that criminalize recruitment, within the Republic of Korea, to terrorist groups that operate either inside or outside the Republic of Korea.

Irrespective of the area of activities within or outside the territory of the Republic of Korea, terrorist organizations fall into the definition of the criminal group pursuant to Article 4, paragraph 1, of the Act on the Punishment of Violent Actions.

An act by the terrorist organizations to recruit members, Korean or foreign, within the territory of the Republic of Korea constitutes the crime of formation of criminal groups in accordance with Article 4, paragraph 1, of the Act on the Punishment of Violent Actions, and is subject to punishment on the basis of the above-mentioned Act, as well as Article 31, paragraph 1, of the Criminal Act.

1.12 Could the Republic of Korea please describe the mechanism by which it provides early warning of anticipated terrorist acts to other Member States.

Consistent with the 1991 Act on International Judicial Mutual Assistance in Criminal Matters, and treaties of mutual legal assistance in criminal matters with other countries, the Public Prosecutor's Office, the National Police Agency, and the National Intelligence Service maintain communication channels with INTERPOL, foreign law enforcement and intelligence agencies, and exchange information related to terrorism. When Korean law enforcement organizations obtain information on possible terrorist activities in other countries, they immediately provide advance warning to their foreign counterparts through established communication channels.

In the event that the Republic of Korea does not have a treaty of mutual legal assistance in criminal matters with countries involved, we provide information and assistance on a reciprocal basis.

1.13 Effective implementation of subparagraphs 2 (d) and (e) requires each Member State to criminalize the use of its territory for the financing, planning, facilitating and committing terrorist acts aimed at other States or their citizens even if no related terrorist act is actually attempted or committed. The CTC would be grateful to have an outline of the legal provisions that achieve this objective, if such provisions do not exist, to know what are the intentions of the Republic of Korea in this regard. Please also indicate whether the Republic of Korea can prosecute, for terrorist offences committed outside its territory against other States and their nationals, fugitive foreigners found in its territory who cannot be extradited.

Article 2 of the Criminal Act provides that the Republic of Korea exercises jurisdiction over all criminal activities committed in the territory of the Republic of Korea. In this regard, in case that part or all of a crime or its result is connected to the territory of the Republic of Korea, the Republic of Korea exercises criminal

jurisdiction over it. Therefore, all kinds of terror-related activities such as planning, financing, facilitation, and execution inside the territory of the Republic of Korea can be prosecuted and punished.

These laws designate the following terror-related activities as crimes:

- Criminal Act: crime of the formation of criminal groups; crime of use of explosives; crime of coercion, of coercion by hostage, of injury by hostage, and of murder by hostage; crime of violence; crime of inflicting bodily harm and violence; crime of murder; crime of false arrest and illegal confinement
- Act on the Punishment of Violent Actions, etc.: crime of the formation of criminal groups; crime of fund-raising activities for criminal groups; crime of assisting criminal groups
- Act on the Aggravated Punishment of Specific Crimes: crime of kidnapping and inducement
- Act on the Control of Firearms, Knives, and Explosives: crime of non-licensed manufacture, sale, and trade of arms
- Aviation Act: crime of imperilling safety on a plane
- Safety of Aircraft Operation Act: crime of hijacking a plane.

The Republic of Korea does not have jurisdiction over terrorist offences committed by foreigners outside its territory against other States and their nationals; we therefore cannot prosecute them.

If the nationality of fugitive foreigners found in the territory of the Republic of Korea or the place where they committed a crime is not a country with which Korea has concluded a bilateral extradition treaty, the Republic of Korea may extradite those fugitives to the relevant country on the basis of reciprocity.

1.14 What safeguards and procedures does the Republic of Korea have in place to prevent the movement of terrorist groups across its borders and the counterfeiting, forgery or fraudulent use of identity papers and travel documents?

In order to prevent the movement of terrorist groups across the border of the Republic of Korea, the Ministry of Justice activates relevant provisions in the Statute of Immigration Control. In accordance with the Statute, the Ministry registers individuals designated as terrorists under the relevant Council resolutions on the controlled list, and disseminates a list to every border control authority via computer networks to enforce a strict movement watch for listed individuals.

In order to clamp down on passport forgery, we are reinforcing preventive security measures on passports and tracking down organized passport forgery. Beginning May 2002, we are utilizing photographs printed on certificates of residence digitally registered on the computer database of the Ministry of Government Administration and Home Affairs for screening before issuing a new passport.

As a means to prevent fraudulent acts of replacing photographs, which comprise the bulk of the prosecuted passport forgery cases, we are examining the possible adoption in our passport issuance system of a photo-transcription process that makes photograph replacements difficult, as well as a somatological identification method.

1.15 Please outline the provisions of law, and the mechanisms in place, relating to immigration and refugees that relate specifically to the denial of safe haven to those who are accused of terrorist acts, especially in cases where those persons are not detected carrying weapons or explosives and are not known or suspected to be acting against the interests specifically of the Republic of Korea or its citizens.

Article 11, paragraph 1, of the Statute of Immigration Control stipulates that entry into the country can be prohibited to persons providing grounds for concern that the person in question may either threaten the national interest of the Republic of Korea and/or public safety. Pursuant to this provision, those who are accused of terrorist acts are not permitted to enter into the country.

In particular, the Republic of Korea enforces strict immigration control on terrorists, including the members of Taliban and al-Qa'idah groups against whom the Security Council has imposed travel bans.

Article 76 of the Statute rules that a deliberative organ to decide on refugee status shall be set up within the Ministry of Justice and it shall conduct an appropriate process to review or revoke the refugee status. Those accused of terrorist acts cannot apply for the refugee status because they are barred from entering into the country. In the unlikely event an individual illegally entered the Republic of Korea and applied for the refugee status, they would be denied as a refugee through the review process. Even in the unlikely event a terrorist managed to obtain refugee status through deception, this status can be revoked immediately.

1.16 The first report indicates that, in some cases, political motivation is recognized as a ground for refusing extradition, but that terrorist acts do not come within the category of political offences. What is the basis on which they are excluded? For example, is there legislative provision directly to that effect or does the Extradition Act of 1988 confer a power on a court or other authority to determine the issue?

In accordance with Article 8, paragraph 1, of the Extradition Act, terrorist offences, even if recognized as political crimes, can be extradited. The principle of denial of extradition of crimes of political nature will not be invoked in cases of terrorist offences, because the Republic of Korea has jurisdiction over those offences or is obligated to extradite those terrorists according to multilateral treaties, and because terrorist offences can inflict harm on life and body of a great many people.

In accordance with Article 12 of the Extradition Act, the final decision on extradition to foreign countries shall be taken by the High Court in Seoul, on the submission of an extradition case by the Public Prosecutor's Office.

1.17 The CTC would be grateful to receive a report on the progress made by the Republic of Korea in ratifying, and implementing in domestic legislation, the international conventions and protocols related to the prevention and suppression of terrorism mentioned in its first report. The CTC notes the list of crimes relevant to the implementation of those international instruments that is set out in Appendix 1 to the supplementary report but notes also that many of them do not appear to be specific to the international instruments concerned. Is it intended to make specific provision to give effect to those instruments? If not, please provide a detailed outline of the provisions in question, with particular attention to their application to the obligations arising under those instruments.

The Republic of Korea has become the contracting party to 10 out of 12 international conventions and treaties on counter-terrorism. Additionally, we have already signed the two remaining legal instruments of the International Convention for the Suppression of Terrorist Bombing and the International Convention for the Suppression of the Financing of Terrorism. Before the end of the year, the Korean legislature will enact the Act on the Punishment of Terrorist Bombing and the Financing of Terrorism. The Korean Government plans to submit the draft Act to the National Assembly by August 2003.

The Government of the Republic of Korea has made a strenuous effort to legislate appropriate laws in order to implement effectively those international conventions and treaties on counter-terrorism to which the Republic of Korea is a party. The following domestic legislation has been recently adopted by the National Assembly: the Aviation Safety and Security Act, the Act on the Suppression of Unlawful Acts against Ships and Maritime Installations, the Act on the Protection of Nuclear Facilities and the Preventive Measures of Radioactive Accident. These Acts are intended to crack down on and punish such offences provided for as criminal offences in the international conventions and treaties on counter-terrorism. Furthermore, as mentioned above, we are currently in the process of enacting the Act on the Punishment of Terrorist Bombing and the Financing of Terrorism.

II. Assistance and guidance

The Government of the Republic of Korea shares the sense of urgency and necessity for the provision of assistance in the field of counter-terrorism to those countries in need, and supports the facilitating role by the CTC in this regard. We are considering various ways and means of sharing our counter-terrorism experiences with other countries in an effective manner.